IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP NO. 18296 of 2006

DATE OF DECISION: 20.11.2006

Rupinderjit Kaur ....Petitioner

Versus

State of Punjab and others ....Respondents.

CORAM: HON'BLE MR.JUSTICE J.S. KHEHAR
HON'BLE MR. JUSTICE S.D. ANAND

PRESENT: Mr. Harinder Sharma, Advocate
for the petitioner.

**J.S. Khehar, J.**

The petitioner claims to be an outstanding sportsperson in the discipline of swimming. She is stated to have participated in prestigious championships at the National level organised by Sports Federation of India, Sports Authority of India, Inter-University Championships and School Federation of India. On the basis of the aforesaid achievements, the petitioner was awarded a `B' Grade Sports certificate by the Director of Sports, Punjab.

The Coordinator, Development of Advance Computing (respondent No.4) issued an advertisement dated 21.10.2006 for filling up, inter alia, 651 posts of Lecturers. Out of the 651 posts of Lecturers, 50 posts of Lecturers were earmarked for the subject of Mathematics. The petitioner was desirous of appointment against the advertised posts of Lecturer in Mathematics, and as such, submitted her application form,

well before the last date of receipt thereof. The petitioner sought appointment from amongst the 3 percent posts reserved for sportspersons.

Through the instant writ petition, the petitioner has impugned the policy instructions dated 30.12.1996 (Annexure P-11) which have been adopted for the purposes of filling up the reserved posts ear-marked for sportspersons, relevant portion whereof is being extracted hereunder:-

> " It has also been decided that reservation for scheduled castes and backward classes will be made vertical while the reservation for other categories such as ex-servicemen, sportsmen, physically handicapped and freedom-fighters will be horizontal according to the chart annexed to this letter. Thus, scheduled caste, ex-servicemen will be adjusted against the 4% seats earmarked for them in the chart and to that extent they will be counted towards reservation for scheduled castes as well as ex-servicemen. Similar criteria will apply to scheduled caste sportsmen and backward class Ex-servicemen.
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> 3. Government have also decided that the reservation for scheduled castes and backward classes will take precedence over the horizontal reservation for ex-servicemen, sportsmen, physically handicapped and freedom fighters. Thus, for example, in the event of non-availability of the required number of scheduled caste ex-servicemen, the vacancies earmarked for this category would in the first instance go to

> scheduled castes and in case no scheduled castes are available these will be given to the general category ex-servicemen. The principle of carrying forward of reservation of vacancy will also apply with necessary alteration in detail."

It is the vehement contention of the learned counsel for the petitioner, that there can be no reservation within reservation. In this behalf, it is pointed out that 3 percent reservation has to be made exclusively on the basis of performance in sports, without there being further reservation therein, for scheduled castes or for any other reserved category candidates. In this behalf, it is asserted, that if selection and appointment from the seats reserved for sportspersons had been made on the basis of achievement in the field of sports, the petitioner would have definitely been selected for appointment against one of the reserved seat, advertised to be filled up from the category of sportspersons.

In order to substantiate his aforesaid contention, learned counsel for the petitioners relied on the decision rendered by the Apex Court in E.V. Chinnaiah V. State of Andhra Pradesh and others, 2005(1) Recent Services Judgments 247. A perusal of the factual position which came up for adjudication at the hands of the Apex Court in E.V. Chinnaiah's case (supra) reveals that 15 percent of the posts were reserved for Backward Classes in the State of Andhra Pradesh. A Presidential List notified 57 castes in the State of Andhra Pradesh to be Backward Classes for the State of Andhra Pradesh. These 57 castes were sub-divided into four groups referred to as Group A, Group B, Group C

and Group D. One percent of the seats reserved for Backward class candidates was laid down to be filled up from Group A, 7 percent of the seats of backward class candidates were reserved to be filled up from Group B, 6 percent of the seats of backward class candidates were reserved to be filled up from Group C, and 1 percent of the seats of backward class candidates were reserved to be filled up from Group D. The action of the State of Andhra Pradesh in dividing the 57 castes of the Backward Classes candidates, enumerated in the Presidential List, into four categories for independent reservation, came up for consideration at the hands of the Apex Court in E.V. Chinnaiah's case (supra). The Apex Court recorded the following conclusion on the issue in hand:-

> "23. We will now consider whether the Scheduled Castes List prepared by the President under Article 341(1) forms one class of homogeneous group or does it still continue to be a list consisting of different castes, sub-castes, tribes etc. We have earlier noticed the fact that the Constitution has provided for only one list of Scheduled Castes to be prepared by the President with a limited power of inclusion and exclusion by the Parliament. The Constitution intended that all the castes included in the said Schedule would be 'deemed to be" one class of persons but arguments have been addressed to the contrary stating that in spite of the Presidential List these castes continue to hold their birth mark and remain to be separate and individual caste though put in one List by the President. It is the contention of the

respondents that by merely including them in a List by the President these castes do not become a homogeneous group, therefore, to fulfil the constitutional obligation of providing an opportunity to these castes more so to the weaker amongst them, it is permissible to make a classification within this class, as was made permissible in regard to other backward classes (OBC) by this Court in Indra Sawhney's case (supra). We cannot accept this argument for than one reason.

24. It cannot be denied that all the castes included in the Presidential List for a State are deemed to be Scheduled Castes, which means they form a class by themselves.

25. In State of Kerala & Anr. Vs. N.M. Thomas and others, 1976(2) SCC 310 para 82 at 348, Mathew, J. discussing the status of the caste found in the Presidential List observed:-

> "This shows that it is by virtue of the notification of the President that the Scheduled Castes come into being. Though the members of the Scheduled Castes are drawn from castes, races or tribes, they attain a new Status by virtue of the Presidential notification".
>
> (Emphasis supplied)

26. Krishna Iyer,J. speaking in the same case with reference to the status of castes included in the Presidential List had this to say:-

> "We may clear the clog of Article 16(2) as it stems

> from a confusion about caste in the terminology of scheduled castes and scheduled tribes. This later expression has been defined in Articles 341 and 342. A bare reading brings out the quintessential concept that they are no castes in the Hindu fold but an amalgam of castes, races, groups, tribes, communities or parts thereof found on investigation to be the lowliest and in need of massive State aid and notified as such by the President." (Para 135) (Emphasis supplied.)

27. According to Justice Krishna Iyer, though there are no castes, races, groups, tribes, communities or parts thereof in Hinduism, the President on investigation having found some of the communities within amalgam as being lowliest and in need of massive State aid included them in one class called the Scheduled Castes. The sequitor thereof is that Scheduled Castes are one class for the purposes of the Constitution.

28. Justice Fazal Ali in the very same case referring to caste enumerated in the list of Scheduled Caste states thus i paragraph 169:

> "Thus in view of these provisions the members of the scheduled castes and the scheduled tribes have been given a special status in the Constitution and they constitute a class by themselves." (Emphasis supplied).

> 29. Thus, from the scheme of the Constitution, Article 341 and above opinions of this Court in the case of N.M. Thomas (supra) it is clear that the castes once included in the Presidential List, form a class by themselves. If they are one class under the Constitution, any division of these classes of persons based on any consideration would amount to tinkering with the Presidential List."

It is, therefore, apparent that in E.V. Chinnaiah's case (supra) the Supreme Court clearly concluded that the list of Backward Classes in a State constituted one homogeneous class, and that, there could be no bifurcation /fragmentation thereof.

It is not possible for us to accept the aforesaid contention of the learned counsel for the petitioner on the basis of the decision rendered by the Apex Court in E.V. Chinnaiah's case (supra). A perusal of the impugned policy instructions dated 30.12.1006 reveals that the same does not envisage any further classification within the category of sportspersons or any further classification within the category of scheduled castes candidates. It is not a matter of dispute that consequent upon the issuance of the aforestated advertisement dated 21.10.2006 the posts earmarked to be filled up by way of reservation from amongst sportspersons, have actually been filled up from amongst the sportspersons, although while filling up one of the aforesaid posts, the same was filled up exclusively from the category of scheduled castes candidates. Yet, this action at the hands of the respondents, in our view, has no nexus with the conclusions drawn by the Apex Court in E.V.

Chinnaiah's case (supra). Accordingly, it is not possible for us to accept the plea of the learned counsel for the petitioner.

No other contention was advanced by the learned counsel for the petitioner.

For the reasons recorded hereinabove, we find no merit in the instant writ petition and the same is, accordingly, dismissed.

( J.S. Khehar )
Judge

( S.D. Anand )
Judge

November 20, 2006.
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